

Feldman

PCTI 15043

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest Regarding Reinstatement of Canceled IFB]

FILE: B-198151; B-198151.2

DATE: October 1, 1980

MATTER OF: Specialties Bindery, Inc.; DLG05264
Universal Bindery, Incorporated DL605265

DIGEST:

1. IFB canceled after bid opening because agency believed that instructions for completing pricing schedule confused bidders may be reinstated where award will serve needs of Government and there is no prejudice to competition.
2. Whether bidder has equipment necessary to perform, and whether bidder intends to subcontract some work relate to firm's responsibility and thus can be established after bid opening until time of award. Further, GAO does not review affirmative determinations of responsibility except in limited circumstances.

Specialties Bindery, Inc. (Specialties) and Universal Bindery Incorporated (Universal) protest the cancellation of invitation for bids (IFB) 636 issued by the U.S. Geological Survey, Department of the Interior (Interior). The IFB was for map folding and related services. The agency canceled the IFB and issued a new solicitation because it believed the IFB's pricing schedule was ambiguous and misleading. Specialties protested that as the low bidder it should have been awarded the contract. Universal, the only other bidder, also protested the cancellation, and further argued that Specialties intended to subcontract some of the contract work without so representing in the firm's bid, and that at bid opening Specialties lacked the equipment necessary to perform the contract. Interior subsequently proposed to reinstate the original IFB because the schedule's ambiguity did not adversely affect competition.

We find that the invitation properly may be reinstated, and the protests on that matter are sustained. Universal's protest against award to Specialties under the reinstated invitation is dismissed.

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The confusion in this case stemmed from items three and four of the pricing schedule, which are set forth below:

	Unit Prices	
	FIRST 12 MOS.	OPTION PERIOD
[item no.] 3. Price for inserting item(s) into plastic bags and squeezing 'zipper' shut, per 1000 bags		
(a) One item (map)		
215 thousand bags (estimated per year)		
--Per Thousand:		
(b) Two items (maps, tab cards, or pamphlets) 10 thousand bags (estimated per year)--Per Thousand:		
(c) Three items (maps, tab cards or pamphlets) 10 thousand bags (estimated per year)--Per Thousand		
(d) Four items (maps, tab cards or pamphlets) 10 thousand bags (estimated per year)--Per Thousand		
(e) Each additional item over four items 10 items per bag x 20 thousand bags (estimated per year)--Per Thousand		
[item no.] 4. Price for inserting items(s) into paper envelopes, per 1,000 envelopes:		
(a) One item (map) * * * Per Thousand		
(b) Two items * * * Per Thousand		
(c) Three items * * * Per Thousand		
(d) Four items * * * Per Thousand		
(e) Each additional item over four items 10 items per bag x 70 thousand envelopes (estimated per year)--Per Thousand		

Interior states that by using the language "Each additional item over four items" in 3(e) and 4(e), the agency wanted bidders to submit an incremental price per thousand which the agency would use to price map folding or other services when more than four items were involved. Thus, for example, the price to be paid for inserting six items into 1000 bags under item 3(e) would be determined by multiplying the incremental price by two (six items less the four priced in 3(d)) and adding this result to the price per thousand for four items in 3(d).

However, for purposes of evaluating prices for award the IFB stated:

"Award will be made to that responsible bidder who submits the lowest, responsive bid for items one through nine for the first 12 month quantity only. The lowest bid will be determined by multiplying the unit price bid by the estimated quantity for each item and by then summing the resulting amounts for all items."

Therefore, for evaluating item 3(d), for example, the unit price bid for inserting four items into 1000 bags is multiplied by 10 (10,000 bags is the estimated quantity per year).

The following base year unit prices for items 3 and 4 were received:

	<u>Specialties</u>	<u>Universal</u>
3(a)	\$ 44.62	\$ 38.50
3(b)	53.84	53.50
3(c)	63.05	68.50
3(d)	72.27	83.50
3(e)	9.22	173.50
4(a)	17.46	27.00
4(b)	24.74	39.00
4(c)	31.28	51.00
4(d)	38.07	63.00
4(e)	6.79	135.00

Because Universal's prices for 3(e) and 4(e) were substantially greater than Specialties', the contracting officer

suspected a mistake and requested that Universal confirm its prices. In response, Universal asserted that it interpreted the invitation as requiring bidders to enter prices for the items based on inserting all 10 items into bags or envelopes instead of inserting an incremental price. Universal stated that its incremental price for item 3(e) actually was \$15.00 per thousand for each additional insert over four, and that it arrived at the unit price of \$173.50 per thousand by multiplying \$15 by the six additional inserts to reach 10, and adding the \$90 result to the bid price indicated at item 3(d) to insert four items into 1000 bags (\$83.50). Universal also stated that its incremental price for item 4(e) was \$12 per thousand, and it similarly arrived at the entered price of \$135 per thousand for 10 items by multiplying \$12 by the six additional inserts to reach 10, and adding the \$72 result to the bid price indicated at item 4(d) for inserting four items into 1000 envelopes (\$63).

The contracting officer canceled the IFB because he believed that the invitation was ambiguous with respect to how a bidder should calculate bid prices for items 3(e) and 4(e), i.e., whether a bidder should enter on the schedule an incremental price per thousand for each insert over four, as Specialties did, or a price per thousand for 10 inserts, as Universal did. Interior's subsequent proposal to reinstate IFB 636 and award to Specialties is based on the fact that when Universal's and Specialties' bid prices for items 3(e) and 4(e) are evaluated on the same basis, e.g., Specialties' bids of \$9.22 per additional insert (3(e)) and \$6.79 per additional insert (4(e)) against Universal's asserted incremental prices of \$15 and \$12, respectively, Specialties' total bid still is low.

We have held that even the use of an inadequate, ambiguous or otherwise deficient specification is not, in and of itself, a compelling reason to cancel an IFB and readvertise where an award under the solicitation as issued would serve the actual needs of the Government and would not prejudice the other bidders. CAF Corporation, et al., 53 Comp. Gen. 586 (1974), 74-1 CPD 68.

Notwithstanding that Universal entered a price of \$173.50 per thousand to insert 10 items, instead of an incremental price of \$15 per thousand for 3(e), its evaluated price for 3(e) would be \$3470 calculated according

to the IFB's formula for determining the low bidder as quoted above. That figure represents Universal's price for inserting 10 items into 20,000 bags, the estimated quantity. The evaluated price for item 4(e) would be \$9,450 which is Universal's price for inserting 10 items into 70,000 envelopes, the estimated quantity. Specialties' evaluated prices for 3(e) and 4(e), calculated in the same manner, are \$2,551.80 and \$5,516.70, respectively. When these figures are considered, Specialties' total bid is lower.

We note here that Universal suggests that its price for 3(e) should be evaluated as \$300, not as \$3470, and its price for 4(e) should be evaluated as \$840 rather than \$9450. The \$300 figure represents the price to insert one additional item over four into 20,000 bags (\$15 per thousand x 20 thousand); \$840 is the price to insert one additional item over four into 70,000 envelopes (\$12 per thousand x 70 thousand). Universal points out that because of the structure of the invitation as a whole, if Specialties' bid is similarly evaluated Universal would be the low total bidder. However, this position is untenable since the invitation clearly advised that in determining the low bidder the price per thousand would be multiplied by the stated estimated quantity, which was 10 inserts into 20,000 bags for 3(e) and 10 inserts into 70,000 envelopes for 4(e).

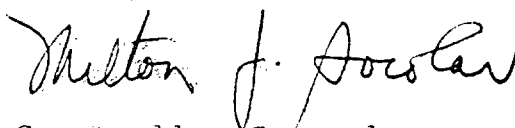
Under these circumstances, the competition would not be prejudiced by reinstating the IFB, and we thus have no objection to that action. See Isometrics, Inc., B-192151, September 13, 1978, 78-2 CPD 198.

Universal also protests that Specialties should not be awarded the contract if the IFB is reinstated because (1) although Specialties indicated in its bid that it would perform all contract work itself, the firm allegedly intends to subcontract some of the work, and (2) Specialties allegedly does not possess some of the mapfolding equipment necessary.

The IFB, however, did not prohibit subcontracting but only notified bidders that subcontractors would be subject to "pre-award" inspection. In addition, the IFB simply required bidders to list the equipment which would be used.

The information was required to permit the contracting officer to determine whether the bidder was capable of performing the contract. As such, the information relates to the bidder's responsibility. Airwest Helicopters, Inc., B-193277, June 7, 1979, 79-1 CPD 402; Dubicki & Clarke, Inc., B-190540, February 15, 1978, 78-1 CPD 132. Therefore, whether Specialties will subcontract some of the work and whether Specialties has the necessary mapfolding equipment can be established after bid opening until the time of award. See 49 Comp. Gen. 553 (1970). To the extent that these matters will impact on the contracting officer's determination of Specialties' responsibility, we point out that we will not review a contracting officer's affirmative determination of responsibility except where fraud on the part of contracting officials is shown, or it is alleged that a definitive criterion of responsibility has not been applied. Bowman Enterprises, Inc., B-194015, February 16, 1979, 79-1 CPD 121. Neither exception applies here.

Universal's protest of these issues is dismissed.



For the Comptroller General
of the United States